

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Amber Spitzer, on behalf of herself and all
others similarly situated,

Plaintiffs,

Civ. No. 07-4070 (RHK/AJB)

ORDER

v.

Target Corporation, Graco Children's Products,
Inc., and Simplicity, Inc.,

Defendants.

This matter is before the Court *sua sponte*. On November 21, 2007, Defendant Simplicity, Inc. ("Simplicity") filed a Motion to Dismiss Plaintiff Amber Spitzer's Amended Complaint. On November 30, 2007, Defendant Target Corporation ("Target") also filed a Motion to Dismiss the Amended Complaint, adopting all of Simplicity's arguments and further arguing that it is entitled to a more-definite statement of Spitzer's claims. Both Motions are scheduled to be heard by the Court on January 24, 2008.

On January 4, 2008, however, Spitzer filed a Motion for Leave to file a Second Amended Complaint. In her Memorandum in support of her Motion, Spitzer has represented to the Court that she has been advised by Simplicity that it will not oppose her Motion for Leave and that Simplicity will withdraw its pending Motion to Dismiss if the Motion for Leave is granted.

In the Court's view, it makes little sense for the parties to be heard on the Motions to Dismiss while Spitzer's Motion for Leave is pending; if that Motion is granted,

Simplicity will withdraw its Motion to Dismiss and much (if not all) of Target's Motion to Dismiss may be rendered moot or will, at a minimum, require re-briefing since Target has merely adopted all of Simplicity's arguments. Accordingly, the Court believes that further briefing and argument on the Motions to Dismiss should be postponed until after Magistrate Judge Boylan rules on the Motion for Leave.

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS ORDERED** as follows:

1. The hearing on Target's and Simplicity's Motions to Dismiss, currently scheduled for January 24, 2008, is **CANCELED**; and
2. No later than 14 days after Magistrate Judge Boylan rules on Spitzer's Motion for Leave to file a Second Amended Complaint, Target shall serve and file a Memorandum addressing the impact of Magistrate Judge Boylan's ruling on its Motion to Dismiss. In the event that issues raised in the Motion to Dismiss remain outstanding, the Court will set a further briefing schedule to address those issues at that time.

Dated: January 7, 2008

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge